

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSH L. ANDERSON,)	
)	
Plaintiff)	
)	
v.)	
)	Civil Action No. 04-135 Erie
LARRY E. KOPKO, RANDY J. ICKERT)	
and KATIE L. AVENALI,)	
)	
Defendants)	JURY TRIAL DEMANDED

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Defendants Larry E. Kopko, Randy J. Ickert and Katie L. Avenali respectfully submit the following Response to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction.

1. On October 24, 2005 plaintiff Josh L. Anderson filed (a) a proposed Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction and (b) a Brief in Support of Order to Show Cause for a Preliminary Injunction, collectively referred to herein as a "TRO Motion."

2. The Brief filed by plaintiff asserted that plaintiff would "again be in the custody of the Warren County Prison on November 3, 2005" and that "[P]laintiff was last in the custody of the Warren County Prison from August 23, 2005 to August 31, 2005 and experienced some of the type of conduct giving rise to [p]laintiff[s] complaint."

3. Prior to November 2, 2005 plaintiff was residing at the Pennsylvania State Correctional Institution at Coal Township, located at 1 Kelley Drive, Coal Township, Pennsylvania 17866-1020. On November 2, 2005 at 4:15 p.m. he became a resident of the

Warren County, Pennsylvania Prison so that he could attend a criminal jury trial of an action in which he was the defendant on November 3, 2005.

4. The criminal charges against plaintiff were tried before a jury on November 3, 2005 and, at the end of the day, the jury entered a verdict of guilty.

5. Plaintiff remained a resident of the Warren County Prison until 10:32 a.m. on November 4, 2005, when he was transferred back to the State Correctional Institution Coal Township, located in Coal Township, Pennsylvania, described above. Plaintiff was transferred to that institution because on the morning of November 4, 2005 he was given a sentence of two to four years at that institution based on the jury verdict of guilty entered on November 3, 2005.

WHEREFORE, defendants Larry E. Kopko, Randy J. Ickert and Katie L. Avenali respectfully request that the Court issue an order dismissing plaintiff's TRO Motion as being moot.

Respectfully submitted,

/s/ James T. Marnen
James T. Marnen
PA ID No. 15858
KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.
120 West Tenth Street
Erie, PA 16501-1461
General Tel: 814-459-2800
Direct Dial Tel: 814-459-9886, Ext. 203
Fax: 814-453-4530
Email: jmarnen@kmgslaw.com

Attorney for Defendants,
Larry E. Kopko, Randy J. Ickert
and Katie L. Avenali

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSH L. ANDERSON,

Plaintiff

V.

LARRY E. KOPKO, RANDY J. ICKERT
and KATIE L. AVENALI,

Defendants

)

)

)

)

)

)

)

)

)

)

Civil Action No. 04-135 Erie

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 4th day of November, 2005, a copy of the within document was served on all counsel of record and unrepresented parties in accordance with the applicable rules of court.

/s/ James T. Marnen

James T. Marnen

#642043